

1 learned from Mr. Hicks initially?

2 A From Mr. Hicks initially it was just that it  
3 existed, that it was already functioning, that it would  
4 continue and that Mr. Dille didn't want to lose this because  
5 if Booth had to sell the -- John Booth had to sell the radio  
6 station promptly because at that point we had ownership  
7 limits, and Mr. Booth was doing a deal with somebody where  
8 he had to divest himself of some stations very, very  
9 quickly, including some that were in Michigan that we were  
10 aware of. This was one that he had to get rid of very, very  
11 quickly.

12 This information I'm talking about now came from  
13 Mr. Hicks and Mr. Brown together in the same room talking  
14 about this either at the September board meeting or prior to  
15 the board meeting.

16 I can't tell you when, but Mr. Brown speaking  
17 primarily was that Mr. Dille was seeking a buyer for the  
18 Booth property that would work with him and would pledge to  
19 continue the joint sales agreement, that his goal -- he  
20 would love to own the station, but couldn't, but that  
21 whoever did own it he wanted to make sure that that would be  
22 a party that would allow him to continue the joint sales  
23 agreement. He did not want to lose that.

24 Q Could you please turn to page 9 of Exhibit 23?  
25 There is a signature there above your printed name. Is that

1 your signature?

2 A Yes, it is.

3 MR. SHOOK: Your Honor, could the witness be  
4 excused for a minute? There is a matter I want to bring up  
5 outside of the witness' presence.

6 JUDGE CHACHKIN: All right.

7 MR. SHOOK: Your Honor, approximately a week ago,  
8 I guess it was a week ago today, the Bureau distributed a  
9 letter to all the parties and myself which reflected what  
10 portions of various depositions and this particular  
11 affidavit the Bureau deemed to be relevant. With that in  
12 mind, we would like to offer Exhibit 23 into evidence.

13 JUDGE CHACHKIN: This is his own statement?

14 MR. SHOOK: Yes, sir.

15 JUDGE CHACHKIN: What is the purpose of offering  
16 his statement if he is going to testify?

17 MR. SHOOK: Your Honor, there are a number of  
18 documents that are also a part of that testimony.

19 JUDGE CHACHKIN: Any objections?

20 MR. JOHNSON: We do object, Your Honor.

21 JUDGE CHACHKIN: On what grounds?

22 MR. JOHNSON: On the one that you hinted at, Your  
23 Honor. With respect to the affidavit itself, it is as a  
24 stand alone proposition hearsay, and the witness has offered  
25 fairly comprehensive testimony today directly as to the

1 matters which are the subject of the paragraphs that Mr.  
2 Shook designated. With respect to all of the attachments,  
3 they are plainly hearsay.

4 JUDGE CHACHKIN: Well, I am not going to get into  
5 the documents and whether they are hearsay or not.

6 As far as the affidavit itself, I certainly will  
7 object to that. There is no purpose. The witness is here  
8 to testify. If they want to challenge the witness'  
9 testimony based on his prior statement that is one thing,  
10 but there is no basis for you to offer a corroborative  
11 statement at this point. Other documents I am not ruling on  
12 until you offer them, but --

13 MR. SHOOK: Your Honor, they are all part of --

14 JUDGE CHACHKIN: Presumably you could question Mr.  
15 Sackley concerning any of the matters listed here. If he  
16 needs to refresh his recollection, you can use it for that  
17 purpose, but you certainly cannot offer his prior statement,  
18 his testimony, when the witness is here to testify.

19 MR. SHOOK: That is fine, Your Honor. Your Honor,  
20 with respect to the various attachments, though, they are a  
21 part of the exhibits, and they were referenced in the  
22 Bureau's submission.

23 JUDGE CHACHKIN: You could make your offer of the  
24 other documents if the witness has testified about these  
25 documents.

1 MR. SHOOK: I would also --

2 JUDGE CHACHKIN: We do not need his affidavit.

3 MR. SHOOK: That is fine, Your Honor, with that  
4 understanding in mind.

5 JUDGE CHACHKIN: All right. Let's call the  
6 witness back.

7 MR. JOHNSON: Your Honor, I think there may be  
8 some lack of clarity --

9 MR. SHOOK: I think there is a little confusion at  
10 this point in terms of --

11 MR. JOHNSON: -- in my mind about whether these  
12 documents have been admitted into the record.

13 JUDGE CHACHKIN: They have not been admitted in  
14 the record.

15 MR. JOHNSON: Thank you.

16 JUDGE CHACHKIN: They have not been offered yet.

17 MR. JOHNSON: Thank you, Your Honor.

18 JUDGE CHACHKIN: When they are offered, I will  
19 make a ruling.

20 MR. SHOOK: Your Honor, I am offering them.

21 JUDGE CHACHKIN: You are offering what, the  
22 confidential agenda? As far as the affidavit itself, which  
23 is pages 1 through 9, that will be rejected.

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Mass  
4 Media Bureau Exhibit No. 23,  
5 pages 1 through 9, was  
6 rejected.)

7 JUDGE CHACHKIN: Are you offering the remainder of  
8 the exhibit?

9 MR. SHOOK: That which we had noted in our letter  
10 to you, Your Honor, yes. There are certain parts of this  
11 that were not being offered. Do you want me to specify at  
12 this point what it is?

13 JUDGE CHACHKIN: The reporter does not know what  
14 you are offering and what you are not offering, so it is  
15 going to have to be either supplemented --

16 MR. SHOOK: All right, Your Honor. Let me spell  
17 it out then.

18 JUDGE CHACHKIN: Yes. I think you better spell it  
19 out.

20 MR. SHOOK: I am offering the confidential agenda,  
21 which is marked as pages 10 through 13.

22 JUDGE CHACHKIN: All right. What else?

23 MR. SHOOK: I am also offering the minutes of  
24 September 28, which are marked as pages 14 and 15. I am  
25 offering the minutes which are marked as pages 17 through

1 19. Those would be the minutes of January 28, 1994.

2 JUDGE CHACHKIN: You are not offering the  
3 information from the forecasting?

4 MR. SHOOK: No, Your Honor. I believe that is not  
5 necessary.

6 JUDGE CHACHKIN: All right. Pages 17 through 19?

7 MR. SHOOK: And I am offering pages 20 through 23,  
8 which is the March 31 letter from Alan Campbell to the  
9 Crystal Radio Group, and then the cover letter that is dated  
10 April 5, 1994, to Mr. Sackley. I am also offering the  
11 shareholders agreement, which is pages 33 through 57.

12 MR. WERNER: Excuse me, Mr. Shook. Pages?

13 MR. SHOOK: 33 through 57.

14 MR. WERNER: Thank you.

15 JUDGE CHACHKIN: And this is consistent with what  
16 you indicate in your letter you were offering?

17 MR. SHOOK: Yes, sir.

18 JUDGE CHACHKIN: All right.

19 MR. SHOOK: With the inspection of page 16, which  
20 I think I may have included in my letter.

21 JUDGE CHACHKIN: No, it is not included.

22 MR. SHOOK: It is not included? Okay.

23 JUDGE CHACHKIN: All right. Any objection to any  
24 of this material?

25 MR. JOHNSON: Your Honor, we have one objection,

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1 and that would be to the document denominated Confidential  
2 Agenda, which appears at pages 10 through 13, I believe, of  
3 Exhibit No. 23.

4 JUDGE CHACHKIN: On what grounds?

5 MR. JOHNSON: On hearsay grounds, Your Honor. If  
6 I may elaborate just a little bit, the witness testified  
7 that this is a document which he himself prepared in  
8 narrative fashion obviously, not under oath and out of  
9 Court, so in that sense it is a pure hearsay statement.

10 In particular, it is misleading in the context  
11 here because if it is offered to establish that certain  
12 discussions were had or were not had at the September 28,  
13 1993, board meeting, it is particularly prejudicial to us,  
14 in part because the witness has already testified at some  
15 length about what he recalls being discussed, and in part I  
16 believe the record will reflect it is inconsistent with the  
17 minutes of what was discussed.

18 JUDGE CHACHKIN: But this is the agenda which was  
19 prepared before the meeting --

20 MR. JOHNSON: It is the agenda --

21 JUDGE CHACHKIN: -- which he presented to Mr.  
22 Hicks and all the other board members.

23 MR. JOHNSON: I do not believe that is his  
24 testimony. I think he said he prepared a draft agenda,  
25 which Mr. Hicks objected to and which he then prepared this

1 in response.

2 JUDGE CHACHKIN: That is correct. That is  
3 correct, and this is the final agenda.

4 MR. JOHNSON: Your Honor, my point, and maybe I  
5 have been less articulate about it, is this document cannot  
6 say what was discussed at the board meeting. It is  
7 incapable of saying that.

8 JUDGE CHACHKIN: It is not offered for that  
9 purpose. There are the minutes of the meeting plus Mr.  
10 Hicks' testimony.

11 MR. JOHNSON: Then one has to wonder what purpose  
12 it is offered for then, Your Honor.

13 JUDGE CHACHKIN: Well, it shows -- well, I will  
14 ask Bureau counsel. What is the purpose of offering the  
15 confidential agenda?

16 MR. SHOOK: Your Honor, it basically sets the  
17 stage for what the parties' understandings were as to how  
18 this transaction was going to go. We have a written record  
19 here what was certainly on the mind of Mr. Sackley and  
20 brought to the attention of Mr. Hicks some months before the  
21 application itself was ever prepared and filed.

22 JUDGE CHACHKIN: But you are not offering it for  
23 the truth of these matters? I assume you are just offering  
24 for the fact this is the agenda prepared by Mr. Sackley as  
25 to what was going to be discussed and what he presented to



1 Mr. Hicks, discussed with Mr. Hicks, prior to it?

2 MR. SHOOK: Not only that, but his testimony then  
3 reflected that this was a particular section that was not  
4 revised.

5 JUDGE CHACHKIN: I understand that, but you are  
6 not claiming that everything in here is being offered for  
7 the truth of the matter; merely that this is Mr. Sackley's  
8 understanding of --

9 MR. SHOOK: Well, of course it is Mr. Sackley's  
10 understanding, and it confirms that he had that  
11 understanding.

12 JUDGE CHACHKIN: I am prepared to receive it for  
13 that limited purpose.

14 MR. SHOOK: Thank you.

15 JUDGE CHACHKIN: No other objections to the other  
16 portions of the exhibit? Is that correct?

17 MR. JOHNSON: None from us, Your Honor.

18 JUDGE CHACHKIN: All right.

19 MR. HALL: None from Hicks Broadcasting either,  
20 Your Honor.

21 JUDGE CHACHKIN: All right.

22 MR. SHOOK: I should call Mr. Sackley back into  
23 the room?

24 JUDGE CHACHKIN: Wait a minute. This is Mass  
25 Media Bureau Exhibit what is that?

1 MR. SHOOK: 23.

2 JUDGE CHACHKIN: 23, as modified, is received in  
3 evidence.

4 (The document referred to,  
5 having been previously marked  
6 for identification as Mass  
7 Media Bureau Exhibit No. 23,  
8 pages 10-15, 17-19, 20-23 and  
9 33-57, was received in  
10 evidence.)

11 JUDGE CHACHKIN: In the future, there is no need  
12 to have the witness withdraw when discussing exhibits and  
13 receiving them; only if there is some personal matter that  
14 you feel the witness should not be present for.

15 MR. SHOOK: I was not certain whether anything  
16 like that would come up, and I just did not want to taint  
17 anything.

18 BY MR. SHOOK:

19 Q Mr. Sackley, I want you to turn to what is marked  
20 as page 6 of Exhibit 23.

21 A Okay.

22 Q I want you to direct your attention to Paragraph  
23 19.

24 A Okay.

25 Q We had had some questions and answers regarding

1     what conversation you had with Mr. Hicks when you found Mr.  
2     Miholer at the Crystal offices subsequent to Mr. Miholer's  
3     termination.

4             A     Correct.

5             Q     Does this refresh your recollection as to what it  
6     is that Mr. Hicks told you relative to Mr. Miholer?

7             MR. HALL: Your Honor, I am going to object.  
8     There was not any showing that there was any problem with  
9     his recollection to begin with, so I think it is improper to  
10    try to refresh the witness' recollection.

11            JUDGE CHACHKIN: Sustained.

12            MR. SHOOK: Your Honor, the Bureau has no further  
13    questions.

14            JUDGE CHACHKIN: All right. Who is going to lead  
15    off with cross-examination?

16            MR. JOHNSON: I will, Your Honor.

17            JUDGE CHACHKIN: You are representing Pathfinder?  
18    Is that correct?

19            MR. JOHNSON: That is correct, Your Honor.

20            JUDGE CHACHKIN: All right. We will run until  
21    12:30 p.m. Then we will recess for lunch.

22            MR. JOHNSON: Thanks. Thank you.

23                    CROSS-EXAMINATION

24            BY MR. JOHNSON:

25            Q     Mr. Sackley?

1           A     Yes?

2           Q     My name is Everett Johnson. We have not had an  
3 opportunity to meet before, but I am one of the herd of  
4 lawyers sitting out here representing the parties. In  
5 particular, I represent Pathfinder Communication. Thank you  
6 in advance for your patience this morning.

7                     I will have a few questions, and let me apologize  
8 to you because I am certain that my questions will extend  
9 beyond the lunch hour, but let us just deal with a couple of  
10 preliminary things.

11                    You told Mr. Shook that you first became a  
12 participant in an applicant for an FCC broadcast license I  
13 believe in 1975. Is that correct?

14           A     That's correct.

15           Q     How old were you at that time, Mr. Sackley?

16           A     Twenty-three.

17           Q     Were you employed at that time?

18           A     Yes.

19           Q     Who were you employed with?

20           A     I was working at the student radio station as an  
21 account executive, so I got some income from that. I was  
22 also working at the University of Illinois Coordinated  
23 Science Laboratory as a computer operator. I got some  
24 income from that.

25           Q     Your application remained pending in one form or

1 another between 1975 and when you took the station on the  
2 air I think you told us in October of 1988, correct?

3 A That's correct.

4 Q Can you just tell us briefly how you were employed  
5 in those intervening 13 years?

6 A I moved from -- the University of Illinois is in  
7 Champaign-Urbana, Illinois, about a two hour drive south of  
8 Chicago. We filed our application in July of 1976. My wife  
9 and I, we've been married since December of 1974. She was  
10 the breadwinner. We moved to Kalamazoo, Michigan, in August  
11 of 1976.

12 My first full-time job I guess on a long-term  
13 basis was working for a company called Manatron. I was an  
14 assistant supervisor of a department that processed data,  
15 put it in binders. We were doing property tax assessment  
16 stuff for assessors, water bills and some payroll. I worked  
17 there until I think June of 1978.

18 I went to work for a company called Edward Rose &  
19 Sons. That company built and managed apartment buildings  
20 out of that office in five states. I was the manager of the  
21 construction accounting department and also supervised  
22 payroll. I left there in February of 1981 when my -- I was  
23 laid off. Recession and 22 percent interest rates. Nobody  
24 was building apartment buildings anymore.

25 One month later I became employed as the business

1 manager for the Kalamazoo Alcohol and Drug Abuse Council, a  
2 non-profit organization that engaged in a maintenance  
3 program, alcohol and drug counseling, and had just opened a  
4 residential alcohol rehabilitation facility. I worked there  
5 until June of 1982, so I was there maybe a year and a half,  
6 a little less than that.

7 I became the administrator for a vascular surgery  
8 practice. At that time it was called Regional Vascular  
9 Surgery. It later became called Vascular Health Center. It  
10 was two physicians that specialized in peripheral vascular  
11 disease surgeons. I managed that office, and I stayed there  
12 until we put the radio stations on the air in 1988. I think  
13 I formally left employment there September 1, 1988, and did  
14 a little contractual work for them for a month or month and  
15 a half after that.

16 Q So really from the time of filing your application  
17 in 1975 through the final grant of the construction permit  
18 in the late fall of 1988, is it fair to say you did not work  
19 in the broadcast business?

20 A No, that's not fair.

21 Q What else did you do? What did I miss?

22 A From -- you asked about employment.

23 Q Yes.

24 A From 1979 to about 1987, I worked at the college  
25 radio station at Western Michigan University, WIDR, as a --

1 this was volunteer. That's why I didn't list it as  
2 employment, but I was a disc jockey there and did an air  
3 shift for eight years and also as one of the older folks on  
4 the staff who showed up for work in a suit, I also got to  
5 mentor and counsel others that were working at the station.

6 Q And that was non-remunerative through that entire  
7 period of time?

8 A That's correct.

9 Q I think you described in response to Mr. Shook's  
10 earlier questions that there were four mutually exclusive  
11 applications initially for the broadcast frequency that was  
12 ultimately awarded to your station. Is that correct?

13 A That's correct.

14 Q Was there a comparative hearing?

15 A Yes, there was.

16 Q How many of the four initial applicants  
17 participated in the comparative hearing?

18 A Four.

19 Q Was it here in Washington?

20 A Yes, it was.

21 Q How long did it take?

22 A It took two weeks. It was in August, and it was a  
23 wonderful time to be in Washington.

24 Q We are all with you on that. Did you hire an  
25 attorney?

1           A     We had engaged counsel when we began the  
2 application process. That was Dick Zaragoza and his firm  
3 have represented us since the initial investigation into the  
4 applications.

5           Q     So the same counsel really represented your  
6 applicant. Was the name of that applicant Airborne? I  
7 apologize.

8           A     It's called the Airborne Group, Ltd., yes.

9           Q     The same counsel represented your applicant from  
10 1975 to 1988? Is that correct?

11          A     That's correct.

12          Q     Who paid for the attorneys?

13               MS. SCHMELTZER: Objection, Your Honor.

14               JUDGE CHACHKIN: Sustained.

15               BY MR. JOHNSON:

16          Q     Well, Mr. Sackley, did you yourself contribute  
17 funds to pay?

18               MS. SCHMELTZER: Objection.

19               JUDGE CHACHKIN: Sustained. How is this relevant?

20               MR. JOHNSON: Your Honor, Mr. Sackley testified at  
21 some length that he became aware that Mr. Hicks was not  
22 actually putting up money to acquire the radio station, and  
23 I wanted to see if that was somehow incompatible with his  
24 own experience.

25               JUDGE CHACHKIN: What difference does it make?



1 MR. JOHNSON: I do not think it makes any  
2 difference at all, Your Honor. That is the point I am  
3 trying to establish. I think it is completely irrelevant.

4 JUDGE CHACHKIN: No, no, no. I am not saying it  
5 may make a difference in the case of Mr. Hicks. What  
6 difference does it make whether he put up any money for  
7 something has nothing to do with this case.

8 MR. JOHNSON: Mr. Sackley testified at some length  
9 about opinions that he formed about the propriety of --

10 JUDGE CHACHKIN: I am not arguing about that.

11 MR. JOHNSON: -- his relationship. If it is, of  
12 course, consistent with his own experience, then I wondered  
13 why he would be concerned. If it is inconsistent with his  
14 experience, I think we ought to hear it.

15 JUDGE CHACHKIN: The objection is sustained.

16 BY MR. JOHNSON:

17 Q I think you said that at some point during the  
18 application process, Mr. Sackley, that you actually withdrew  
19 the application. Is that correct?

20 A Which application process?

21 Q The Airborne application during the period between  
22 1975 and 1988. Am I correct?

23 MR. SHOOK: Objection. That was not his  
24 testimony.

25 JUDGE CHACHKIN: Well, he is asking if that is

1 correct, so I will overrule the objection. You can state  
2 whether it is correct.

3 THE WITNESS: No, sir. No, sir, that's not  
4 correct.

5 MR. JOHNSON: Okay.

6 BY MR. JOHNSON:

7 Q Was it in connection with your transaction with  
8 Mr. Hicks that you filed an application and then withdrew  
9 it?

10 A Yes.

11 Q Could you tell us why you withdrew the  
12 application?

13 A The two entities involved in the merger were  
14 Subchapter S corporations. We were advised that if  
15 Subchapter S corporations are merging that one of the  
16 corporations must disappear, that there would be only one  
17 surviving entity.

18 We originally filed the applications for all three  
19 facilities indicating that the Airborne Group, Ltd., even  
20 though we did plan to change the name, but the Airborne  
21 Group tax ID number would be the one that would survive. We  
22 did that because Airborne's operating history was only five  
23 years old. It was a very clean, simple, structured company  
24 without a lot of baggage and superfluous activities, and  
25 that seemed to be the way to go.

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1           Shortly after filing the applications, Ric Brown  
2       advised me, and presumably Dave at the time, too, that the  
3       accounting folks at it's one of the big firms. We don't use  
4       them anymore. The accounting people had said that there  
5       were tax considerations because Dave's company had some loss  
6       carry forwards from when they had been a C corporation for  
7       awhile, that Dave would take a big tax hit if we continued  
8       with the merger the way that we did, so we withdrew the  
9       applications and refiled with Hicks being the surviving  
10      entity.

11           Q     That is what you meant earlier when you said that  
12      you refiled for tax considerations? Is that correct?

13           A     That's correct.

14           Q     I take it your basic operating concept had not  
15      changed, however?

16           A     No. This was strictly driven by taxes.

17           Q     You and Mr. Hicks did not change any of your plans  
18      about how you intended to operate the entity or what you  
19      intended to do?

20           A     No, sir.

21           Q     Without changing the concepts, you changed the  
22      structure of the deal to do something that was a tax  
23      advantage? Do I have it right?

24           A     Yes. The people at BDO Seidman had said this  
25      would hurt Dave and would not penalize the Airborne

1 shareholders, so really as a courtesy to Dave we did that.

2 Q Just to make sure that I have the timing right,  
3 you changed the structure of the deal in this case after the  
4 initial application was filed, correct?

5 A Just so I'm clear on this, we didn't change the  
6 structure of the deal. We changed -- we withdrew it and put  
7 another surviving entity on the application is all.

8 Q That is what I meant by changed the structure.  
9 You changed the entity that was the applicant?

10 A That's correct.

11 Q And you did that even after the initial  
12 application was filed?

13 A Yes, sir.

14 JUDGE CHACHKIN: All right. We will take a recess  
15 until 1:30 p.m.

16 MR. JOHNSON: Thank you, Your Honor.

17 (Whereupon, at 12:30 p.m. the hearing was  
18 recessed, to reconvene at 1:30 p.m. this same day, Tuesday,  
19 October 20, 1998.)

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A F T E R N O O N S E S S I O N

1:30 p.m.

JUDGE CHACHKIN: Let's go back on the record.

Mr. Johnson?

MR. JOHNSON: Thank you, Your Honor.

Whereupon,

EDWARD J. SACKLEY, III

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

CROSS-EXAMINATION RESUMED

BY MR. JOHNSON:

Q Good afternoon, Mr. Sackley.

A      Good afternoon.

Q Let me shift gears away from the topic that we were discussing before the lunch break.

I take it you have been if not yourself directly a licensee, indirectly a Commission licensee from 1988 until when? When did you cease to be a licensee I guess is what I am asking?

A We sold our stations to Cumulus, and that was closed on July 31 of this year.

Q So as we sit here today at least, you are not yourself a licensee or an owner of any entity that is a licensee? Am I correct about that?

A      No, sir.

1           Q     My question was so bad I confused myself. Do you  
2 mean you are not a licensee today?

3           A     Well, as I take your question, I have ownership  
4 interest in several companies that are FCC licensees. Not a  
5 five percent or greater interest, however.

6           Q     I see. I am not sure it is horribly relevant, but  
7 could you tell us just generally how many companies?

8           A     General Electric, CBS.

9           Q     Do you mean public companies?

10          A     Correct.

11          Q     Any non-public companies?

12          A     No.

13          Q     I take it during the time in which you were  
14 yourself either directly or indirectly a licensee, you  
15 became familiar with the rules and regulations of the  
16 Federal Communications Commission? Is that a fair  
17 statement?

18          A     That's correct.

19          Q     Mr. Sackley, you are not an attorney yourself,  
20 right?

21          A     That's correct.

22          Q     Throughout the course of the period of time when  
23 you were a Commission licensee, did you rely on the advice  
24 of experienced FCC counsel from time to time?

25          A     Yes.

1           Q     For example, when you were completing applications  
2     to acquire either through a comparative hearing or transfer  
3     of broadcast license, did you rely on the advice of FCC  
4     counsel in connection with those?

5           A     Yes.

6           Q     I take it that in addition to relying on the  
7     advice of specialized FCC counsel, you as a business person  
8     have also relied on the advice of outside attorneys from  
9     time to time?

10          A     Yes.

11          Q     Would that be true, for example, at Crystal? Is  
12     it fair to say that as the president of Crystal, you have  
13     from time to time relied on the advice of outside attorneys?

14          A     Yes.

15          Q     Now, Ric Brown, who you testified about this  
16     morning, was one such outside attorney for Crystal? Is that  
17     correct?

18          A     He was a partner in the firm that we engaged as  
19     corporate counsel, yes.

20          Q     I think you told us that he attended the board  
21     meetings of Crystal, the two you have described in September  
22     of 1993 and in January of 1994. Was Mr. Brown in attendance  
23     at both of those?

24          A     Yes, he was.

25          Q     He was a board member, I think you told us?

1 A That's correct.

2 Q Did he also attend as counsel to the corporation?

3 A If Mr. Brown was present at the meeting and he was  
4 also -- he was a director, and he was present at the  
5 meeting, and he was also counsel. I don't know how the  
6 rules of your profession work, but I would say he's also  
7 acting as counsel there, yes.

8 Q Just in your life sense of it, he was there as  
9 Crystal's attorney?

10 A Without question, yes.

11 Q As you described your experience in the broadcast  
12 industry, it occurred to me that you yourself have been  
13 personally involved in negotiating a number of transactions.  
14 Is that a fair statement?

15 A Yes.

16 Q Those would include, for example, the initial  
17 structuring of the Airborne Group that filed its application  
18 in 1975, correct?

19 A Yes.

20 Q It would also include your participation in the  
21 structuring with Mr. Hicks of what later became Crystal  
22 Broadcasting? Is that a fair statement?

23 A Yes, sir.

24 Q Are there others that you were involved in?

25 A There were. Obviously the sale to Cumulus



1 Broadcasting. I participated in that. I also was involved  
2 in talking with another licensee in the community about  
3 purchasing a station at one point in time. It did not lead  
4 to filing an application, but we did discuss it.

5 Q Has it been your experience, Mr. Sackley, in  
6 negotiations of the transactions of the kind that you have  
7 just described that the deals change throughout the  
8 negotiation of the transaction?

9 A I think that's a pretty broad question, but to the  
10 extent I can answer that, certainly until a contract is  
11 executed describing a relationship specifically amongst the  
12 parties, it's all part of the negotiation process, so yes.

13 Q So really until there is a final agreement, any  
14 part of the concept can change or be altered or varied  
15 throughout the course of the negotiations?

16 A I don't know. It depends on the type of deal, if  
17 there's a letter of intent involved what limitations there  
18 might be placed in other regards, but in general I'm sure  
19 there's lots of different ways to go on any deal.

20 Q Has it also been your experience that sometimes  
21 components of a deal or transaction are not actually  
22 negotiated until near the end of the negotiations?

23 A That's a possibility.

24 Q You testified in response to Mr. Shook's questions  
25 this morning about a for sale provision that was in I think

1 you described it as the shareholders agreement between  
2 yourself and Mr. Hicks and others. Do you remember that  
3 testimony?

4 A That's correct.

5 Q I take it you and Mr. Hicks and others did not  
6 agree on that for sale provision in the first meeting that  
7 you had to discuss the shareholders agreement?

8 A You'll have to tell me what meeting you're talking  
9 about and set some time frame for me.

10 Q Well, was it something that was negotiated later  
11 in time during the course of your negotiations, or was it  
12 something that you all raised and agreed upon the first time  
13 you ever spoke about a shareholders agreement?

14 A It was later. Originally it was going to be just  
15 the shareholders agreement with a formula and a proration.  
16 That was later given up in favor of the for sale provision.  
17 Yes.

18 Q So it is fair to say, therefore, in your  
19 conversations with Mr. Hicks and other, the way in which one  
20 shareholder would purchase another's interest changed  
21 throughout the course of the negotiations?

22 A Yes.

23 Q You had an initial proposal, which was your  
24 multiple of broadcast cash flow or some other measure? Is  
25 that not correct?

1           A     Yes.

2           Q     And then as the negotiations evolved, you settled  
3     on a completely different form of exit strategy for the  
4     participants in the transaction?

5           A     Yes, but unfortunately it was not an agreement  
6     that inured to the benefit of all the shareholders. That  
7     was one of the concessions that was made at that point in  
8     time.

9                     This was an option that was available only to Mr.  
10    Hicks and to myself. Mr. Hicks' shares plus mine added  
11    together were not a majority of the shares in the  
12    corporation, so we had a situation where the minority was  
13    going to be able to dictate terms for the majority. That  
14    was something that was unsettling to me, but it was  
15    something that we agreed to to advance the deal.

16          Q     You changed that provision even later in time, did  
17    you not? Did there not come a time when that provision was  
18    itself changed, the one you just described?

19          A     The shareholders agreement was amended in  
20    accordance with provisions of the shareholder agreement, and  
21    one of the areas that was amended, amongst others, was the  
22    for sale provision, yes.

23          Q     Just so that I have the general sense of the  
24    progress of this correct, at the beginning of the  
25    negotiations you had in mind one concept. You always

1       agreed, I take it, that there ought to be some way for a  
2       disenchanted shareholder to exit the corporation?

3           A     No.

4           Q     Okay. So you did not even start with that? There  
5       was no initial agreement on that?

6           A     No. What you asked was whether I agreed that  
7       there should be some way for a disenchanted shareholder to  
8       get out. No, that was not the purpose of a shareholder  
9       agreement.

10          Q     What was its purpose?

11          A     A shareholder agreement -- you mentioned  
12       disenchanted. I'm focusing on the term. I don't want you  
13       to give more import to that than necessary.

14                The shareholder agreement we had with the Airborne  
15       Group, Ltd., was a way for individual shareholders of this  
16       outfit to get their money out of the company by offering  
17       their shares for sale back to the company with a formula to  
18       be applied.

19                Those shares were then first offered to the other  
20       shareholders on a prorated basis. If they didn't wish to  
21       buy them or buy all the shares, the corporation, to the  
22       extent that it had capital available, was obliged to  
23       purchase those shares from the shareholder.

24                It was an exit strategy, but it had nothing to do  
25       with disenchantment. It was an exit strategy period for no

1 particular reason.

2 Q You are just telling me that I should not use the  
3 word disenchanted? They could even be happy and get out is  
4 your point?

5 A That's correct.

6 Q Let's go forward in time to your negotiation with  
7 Mr. Hicks. At the beginning of that negotiation or that  
8 shareholders agreement, this is Crystal, not Airborne, I  
9 take it? Am I right so far?

10 A What would become Crystal, yes. Correct.

11 Q At the beginning of that negotiation, was there  
12 general agreement among all of the soon to be shareholders  
13 that there ought to be some form of exit strategy, whether  
14 disenchanted or enchanted, some way to get out?

15 A To the best of my recollection, going into this  
16 the concept of a shareholders agreement was foreign to Mr.  
17 Hicks. We wanted to see a shareholder agreement, and I  
18 don't believe -- because Mr. Hicks hadn't had one because he  
19 was a sole shareholder of his company, it was something that  
20 apparently may have been foreign to him or something he  
21 wasn't familiar with.

22 Q So at that point in time you agreed with Mr. Hicks  
23 at least in principle that you were going to do an overall  
24 transaction, but there was no understanding at all about a  
25 shareholder agreement? Fair statement?

1           A     No. We entered into it with the understanding  
2     that there would be a shareholder agreement. Yes.

3           Q     Okay. Coming back to my question from a moment  
4     ago, at the outset then there was a general agreement among  
5     the soon to be participants in the shareholder agreement  
6     that there ought to be some sort of exit, some back door or  
7     some exit strategy, some way for someone to get out?

8           A     Yes.

9           Q     But it was not agreed upon among you how that  
10    would occur, correct?

11          A     That's correct.

12          Q     In fact, you had very different concepts, I think,  
13    as you explained it to Mr. Shook. Yours was a price  
14    determining formula, correct?

15          A     Correct.

16          Q     At some point later in the negotiations, Mr. Brown  
17    or Mr. Hicks or someone suggested a different formula,  
18    correct?

19          A     Yes.

20          Q     Which you have referred to as the for sale  
21    provision, sometimes referred to as a Texas option. Have  
22    you ever heard that phrase?

23          A     Not before now.

24          Q     But at some point in time, the for sale provision  
25    became what you actually agreed upon?

1           A     That's correct.

2           Q     Mr. Sackley, you testified at some length this  
3 morning, and I do not want to go back into it, but I want to  
4 get a sense of where your memories come from, that you were  
5 engaged in civil litigation with Mr. Hicks. Is that  
6 correct?

7           A     That's correct.

8           Q     In the course of that civil litigation, I take it  
9 you learned a lot of things at that time that you had not  
10 previously known?

11          A     That's correct.

12          Q     You saw a lot of documents, and you heard a lot of  
13 testimony and just knew more at the end of that than you had  
14 known prior to when that litigation was initiated?

15          A     That's correct.

16          Q     Therefore, since that was initiated after, for  
17 example, January 28 of 1994, you did not know as much at  
18 that time as you now know here today? Is that a fair  
19 statement?

20          A     That's correct.

21          Q     Just for my assistance, let me just suggest to you  
22 that most of my questions, unless I indicate otherwise  
23 today, really inquire about your state of mind prior to the  
24 initiation of that litigation.

25                I offer this to you just as a tool for

1 understanding what knowledge I am seeking from you. If that  
2 is not clear in any context, let me know. Sort of as a  
3 general rule of thumb, that is where I am going with this.

4 Let me take an aside. I think you testified that  
5 you first had an encounter, to use your word, with Mr. Dille  
6 sometime your guess is in the first week of September, 1993,  
7 right?

8 A Correct.

9 Q You did not naturally take any contemporaneous  
10 notes of that encounter at that time? You were not carrying  
11 a notebook or anything like that?

12 A No, sir.

13 Q I take it you did not, as you indicated earlier,  
14 run back to your office and try to write down what you had  
15 just learned or what you had just heard or anything like  
16 that?

17 A No, sir.

18 Q Including your testimony here today, Mr. Sackley,  
19 my count could be wrong, and you will correct me if it is,  
20 but by my count you have offered sworn testimony about your  
21 dealings with Mr. Dille and Mr. Hicks on six different  
22 occasions. Is that close enough for everyone?

23 A If you've done the counting. That doesn't sound  
24 that far off, no.

25 Q Okay. Well, you signed an affidavit which is



1 dated April 18, 1995, which is about 19 months after you  
2 recall first meeting with Mr. Dille. Is that the first time  
3 in your memory that you ever reduced to writing or to sworn  
4 testimony what you recalled about that encounter?

5 A April of 1995?

6 Q April 18, 1995, I think is the date of that  
7 affidavit.

8 Mr. Sackley, I am not asking you to guess about  
9 the date. I am just asking you whether prior to that  
10 affidavit you had ever reduced to writing or other form of  
11 sworn testimony your recollections about your September,  
12 1993, encounter with Mr. Dille?

13 A I'll tell you. I frankly don't know if there --  
14 if I sat down and studied things and thought about the  
15 calendar and chain of events, because we had attorney  
16 involvement in August of 1994.

17 The way I do things, if I had been asked for  
18 information from the attorney, I would have typed it down  
19 and provided it in just narrative form, so there may very  
20 well have been things that went back into 1994 when the suit  
21 was provided. I may or may not have sent correspondence to  
22 Mr. Emmons. I think it was all taken care of on the phone.  
23 That would have included that, and that was earlier in 1994.

24 Certainly there was discussion at the board  
25 meetings about this meeting. You know, we have agendas and

1 minutes of those meetings, but, as you know, they're not  
2 transcripts. Whether other people who were there at the  
3 meeting took notes, but in terms of sworn testimony I guess  
4 you would probably know better than I because you're keeping  
5 track of those things whether that's the first thing that  
6 popped up on your radar screen in connection with a Court  
7 thing.

8 I would imagine that sometime during 1994 I  
9 provided a narrative statement that I would have provided to  
10 local counsel about this as we were preparing for this suit.

11 Q So it may be actually that you have tried to  
12 reduce to writing or have spoken under oath more than the  
13 six times that I have identified?

14 I will tell you that the first one that is on my  
15 radar screen is the April 18, 1995, one. Of course, you  
16 were giving us your best recollection at that time about  
17 what happened, I am certain.

18 A Yes. Remember, this was all going on all through  
19 1994, so I can't say there was or wasn't something during  
20 1994 also.

21 Q Okay.

22 A In terms of deposition or sworn statement, I don't  
23 certainly recall any of that, no.

24 Q Your best recollection is that that affidavit was  
25 the first sworn statement on this topic?

1           A     I don't have anything to contradict that  
2     recollection.

3           Q     And then you gave depositions in the civil  
4     proceeding involving Mr. Hicks on April 25, 1996, June 18,  
5     1996, and June 21, 1996. Does that seem roughly right to  
6     you? You testified on three separate occasions?

7           A     Yes.

8           Q     And then I think you alluded to in response to Mr.  
9     Shook's questions, you gave a deposition to my colleague,  
10    Mr. Guzman, on September 24 of this year. I take it you  
11    remember that?

12          A     That's correct.

13          Q     It is fair to say, is it not, through all of those  
14    sworn testimony and perhaps on other occasions, as you  
15    yourself have pointed out, you have been asked a fair number  
16    of times what Mr. Dille may have said to you and what Mr.  
17    Hicks may have said to you? It is not a new topic that we  
18    are talking about here today?

19          A     That's correct.

20          Q     Would it surprise you to learn that in responding  
21    to those questions over those various times, you have  
22    sometimes used different words to describe what the parties  
23    have said to each other?

24          A     It wouldn't surprise me at all.

25          Q     You were not trying, of course, to change or alter

1 your testimony? It is just that people sometimes use  
2 different words to express the same concept? Fair  
3 statement?

4 A That's correct.

5 Q So any variation in the words here would be not a  
6 change in your story, but just the way you happened to  
7 express it at that time.

8 Is it fair to say that as you sit here today, you  
9 do not remember the precise words that you and Mr. Dille  
10 exchanged in the first week of September of 1993?

11 A I remember precise words to the extent that I have  
12 related them. In the recent deposition we covered this  
13 many, many times. There's certain words that are  
14 distinctive and that I have a very vivid recollection of.

15 Q Okay. You do not remember all the words that were  
16 used?

17 A Again, this was not my context. It was Mr. Hicks'  
18 and Mr. Dille's context. I wasn't expecting to see them,  
19 and it was a casual conversation at best.

20 Q Casual meaning you did not take any notes, did not  
21 attempt to write it down for at least some number of months  
22 after that, correct?

23 A No, sir.

24 Q Okay. Before offering your testimony here this  
25 morning, Mr. Sackley, did you review the deposition that you